

## EARLY ELECTION CANCELS REFERENDUM ON LOCAL GOVERNMENT

### ANNOUNCEMENT OF THE REFERENDUM

On 9 May 2013, the Prime Minister announced the Federal Government's intention to proceed with a referendum to recognise local government in the Australian Constitution, to be held on the same day as the Federal Election on September 14, 2013, and would ask Australians to cast a vote on the "financial" recognition of local government through amendment of Section 96 of the Constitution. If passed, the amendment would enable the Commonwealth to continue to provide direct funding to local government for vital community services and infrastructure, something governments from both sides of politics have been doing for over a decade.

ALGA President Felicity-ann Lewis welcomed the announcement of the referendum saying "As we have argued for many years, the only way to protect direct federal funding for community services and infrastructure is to have local government recognised in the Australian Constitution."

On the day of the announcement Mayor Lewis wrote a [letter](#) to all Councils, issued a [press release](#) welcoming the announcement as well as releasing a [public message](#).

Constitutional recognition was and remains an important decision for communities across our nation, to ensure they continue to receive the services and infrastructure they need. It would remove the legal uncertainty about the Federal Government's ability to fund local communities directly through their councils; uncertainty created by two High Court cases - the Pape Case in 2009 and the Williams Case in 2012.

Over the last 2 years, great efforts have been made in securing a referendum on the issue, culminating in the Government's announcement on May 9. But the journey began 6 years ago, when the groundwork was prepared for the Local Government Constitutional Summit in Melbourne in 2008. From that flowed the decision by ALGA to support financial recognition and the mapping out of a process to pursue recognition, which called for the establishment of an Expert Panel.

### THE EXPERT PANEL AND JOINT SELECT COMMITTEE

In December 2011, the report of the Expert Panel on the Constitutional Recognition of Local Government favoured the option for recognition proposed by ALGA-financial recognition. On releasing the Panel's report, the Government restated its strong commitment to the recognition of local government and highlighted the importance of protecting the Commonwealth's ability to fund local government through programs such as Roads to Recovery.

The Government responded to the report of the Expert Panel in November 2012 by appointing a multi-party Joint Select Committee on Constitutional Recognition. The Select Committee was tasked with looking at the majority finding of the Expert Panel - that financial recognition through the amendment of Section 96 is a viable option for a referendum in 2013 - and assessing the likelihood of success of a referendum on financial recognition.

The Joint Select Committee (JSC) presented an interim report on 24 January 2013, recommending that the Government take all administrative steps necessary to proceed with the referendum in 2013. On 30 January, Prime Minister Gillard announced that the date of the Federal Election would be September 14 2013.

The final report of the JSC, presented on 7 March 2013, recommended that the Government proceed with a referendum on financial recognition in conjunction with the Federal Election on September 14. This finding supported and reinforced the work that ALGA and state and territory associations had done over the 5 years since the Constitutional Summit in Melbourne in 2008, to put in place a comprehensive campaign for financial recognition.

## THE LEGISLATIVE PROCESS THROUGH THE PARLIAMENT

Legislation to allow the Commonwealth to provide campaign funding for the referendum was introduced into the Parliament on 21 March 2013, passed by Parliament on 15 May and received the Royal Assent on 17 May 2013. The legislation would have enabled the Commonwealth to use public funding to ensure voters are properly informed about the referendum. Measures outlined in the 2013 Federal Budget provided that in addition to the funding to be provided to the Australian Electoral Commission to run the referendum, the Department of Local Government, Arts and Sport would receive \$11.6 million to undertake a national civics campaign to provide information to the public on the referendum reform process, a need highlighted by ALGA its submissions to the Expert Panel and to the JSC.

The last formal step on the path to the referendum was the introduction of the legislation to change the Constitution. An Exposure Draft of the Bill to change the Constitution to include local government - the Constitution Alteration (Local Government) Bill 2013 - was released by Minister Albanese on 16 May and formally introduced into Parliament on 29 May. The Bill is available [here](#) and the Explanatory Memorandum [here](#). The change proposed by the legislation was that which was proposed by the Expert Panel and the Joint Select Committee, namely to amend Section 96 of the Constitution to formalise the capacity of the Commonwealth to provide funds directly to local government bodies formed by a law of a state. It would not change the status of councils, nor would it give the Federal Government any power over local government. It would simply remove the uncertainty which surrounds direct funding programs such as Roads to Recovery, which have been in place for many years under both sides of politics.

When introducing the Bill into Parliament, Attorney-General Mark Dreyfus made it quite clear that the proposed change to Section 96 to include local government would not diminish or limit the role of the States, or change the status of local government, or give the Federal Government any power over local government. He said that the alteration had been designed specifically to avoid any suggestion that it might permit interference by the Commonwealth with the creation or regulation of local government bodies by States, or enable the Commonwealth to compel local government bodies to accept funding on unacceptable terms and conditions. The Commonwealth would not be able to provide financial assistance on terms or conditions that local government bodies could not meet under State law, and States would not be prevented from changing their systems of local government should they wish to do so.

On 24 June the Bill passed the Parliament with a total of 179 members of Parliament voting in favour of the Bill and 10 voting against (133 for and 2 against in the House, and 46 for and 8 against in the Senate) which on a proportional basis equates to approximately 94% support by those politicians who voted.

Once passed, the *Constitution Alteration (Local Government Bill) 2013* triggered the referendum process for a referendum to be held no sooner than 2 months and no later than 6 months after the proposal has been passed by an absolute majority of Federal Parliament.

## CHANGE OF PRIME MINISTER AND EARLY ELECTION

Following a leadership spill on 26 June, former Prime Minister the Hon. Julia Gillard was replaced as Prime Minister by the Hon. Kevin Rudd. An election called prior to 14 September, would result in the referendum not able to occur in conjunction with the election. The announcement of an early election by Prime Minister Rudd on August 4 ended the possibility of a referendum in 2013. This decision was made without consultation with local government and for reasons outside local government's control.

## THE LOCAL GOVERNMENT "YES" CAMPAIGN

ALGA and the state and territory associations campaigned tirelessly over 6 years at the political level to progress the referendum and to lay the groundwork for a comprehensive campaign structure

at national and state level, which was ready to roll out across the country.

Local government's campaign was funded, ready and being rolled out in anticipation of the legislation passing Parliament, which occurred on 24 June 2013. The Government had also prepared a "neutral" public awareness campaign, to run in tandem with the local government "yes" campaign. Both campaigns were ready to roll out on the week of 5 August - the day after the early Election was called with the consequence of ending the possibility of a referendum. The neutral government campaign and ALGA's "yes" campaign were not launched, but considerable funds had been expended in preparation for a 14 September Election and referendum.

Local government was bitterly disappointed at the decision to cancel the referendum. Councils across Australia contributed funds for the "yes" campaign and the Commonwealth had matched local government funds with an additional \$10M. Funds had been expended for both the Government's neutral campaign and local government's "yes" campaign in good faith and in anticipation of the referendum proceeding.

#### CAMPAIGN COSTS INCURRED

The Department of Regional Australia and Local Government spent approximately \$2.5 million on the neutral campaign. The local government sector has spent close to \$3.5 million in developing the national campaign for rollout in the expectation that the referendum would be held on 14 September. ALGA believes it would be inequitable if councils had to bear the costs of the associated campaign. ALGA has calculated details of the costs incurred and intends to work with the incoming government to seek agreement that local government is reimbursed for its expenditure on the campaign.

#### WHERE TO FROM HERE?

As soon as the early Election was called and the referendum cancelled, ALGA commenced negotiations with the Government on the reimbursement of the costs incurred, with the view of returning the funding provided by councils. Once the Government went into caretaker mode, ALGA wrote to the leaders of all major political parties seeking their commitment to reimburse those funds, should they be elected to government. ALGA also subsequently wrote to the leaders of all political parties, seeking their commitment to support a referendum on the financial recognition of local government in the term of the next Parliament. ALGA continued negotiations with the incoming Coalition Government, on the basis that it was completely inequitable for councils to bear the cost of the campaign, which was cancelled for reasons beyond local government's control.

On 25 October 2013, the Deputy Prime Minister and Minister for Infrastructure and Regional Development, the Hon Warren Truss MP, signalled that the Coalition Government would reimburse local government in full for the costs incurred in the campaign. This is very good news and means that all councils who contributed to the campaign will be refunded the full amount of their contribution. As soon as arrangements for reimbursement are finalised with the Commonwealth, ALGA will reimburse local government state and territory associations, who will, in turn, reimburse councils.

The ALGA President wrote to advise councils of the Government's decision to reimburse campaign funds on 29 October, and a copy of the President's letter is available [here](#).

Mr Truss also reaffirmed the Government's commitment to direct funding of local government through programs such as Roads to Recovery, adding that the Government will look at implications of any further High Court Challenges as they arise. However, the Government has no intention of putting forward a referendum to recognise local government in the near future.

ALGA's motivation in seeking financial recognition was to remove uncertainty created by two High Court challenges (the *Pape and Williams* cases) that cast doubt on the Commonwealth's ability to fund local government directly. This uncertainty remains and has not diminished. On 8 August Mr

Ron Williams initiated a further challenge in the High Court, which goes to the validity of the Federal Financial Frameworks Act 2012. This Act was part of the Commonwealth Government's response to the High Court's decision on Mr William's first case, to provide legislative backing for the funding of hundreds of programs which were placed in constitutional uncertainty by the High Court's decision. A further challenge could build on the High Court's decisions in the two previous cases and on the limits of the Commonwealth's executive powers.

The only way to resolve the uncertainty surrounding this funding is through a referendum. Adequate resourcing of local councils to meet the needs of their communities is in everyone's interest.

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